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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 JOHN JENKINS,

No. C 05-02946 CRB

12 Plaintiff,

**ORDER DENYING MOTION TO
RECUSE AND ORDER TO SHOW
CAUSE**

13 v.

14 CALIFORNIA FEDERAL LOAN
15 ASSOCIATION, et al.,

16 Defendants.
17 _____/

18 Now pending before the Court is plaintiff's motion to recuse as explained in open
19 court on January 30, 2006. The motion is DENIED as there is no basis for recusal.


20 Plaintiff is further instructed to explain to the Court why res judicata does not apply to
21 this action. The principle of res judicata, also known as claim preclusion, provides that a
22 final judgment on the merits of an action precludes the parties from relitigating all issues
23 connected with the action that were or could have been raised in that action. Federated Dep't
24 Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981); Nelson v. City of Irvine, 143 F.3d 1196,
25 1200 (9th Cir. 1998). The doctrine is applicable whenever there is: (1) an identity of claims,
26 (2) a final judgment on the merits, and (3) identity or privity between the parties. Owens v.
27 Kaiser Foundation Health Plan, 244 F.3d 708, 713 (9th Cir. 2001) (citing Blonder-Tongue
28 Laboratories v. Univ. of Ill. Foundation, 402 U.S. 313, 323-24 (1974)). As a general rule,
courts may, *sua sponte*, dismiss a case on res judicata or preclusion grounds "where the
records of that court show that a previous action covering the same subject matter and parties

1 had been dismissed.” See Headwaters Inc. vs. United States Forest Service, 399 F.3d 1047,
2 1054 (9th Cir. 2005) (quoting Evarts v. W. Metal Finishing Co., 253 F.2d 637, 639 n.1 (9th
3 Cir. 1958).

4 The Court dismissed Case No. C 01-2568 CRB, in which plaintiff sued the same or
5 similar parties, on April 19, 2002, for failure to state a claim upon which relief could be
6 granted and failure to prosecute. The Ninth Circuit subsequently affirmed the Court’s
7 dismissal in an unpublished opinion. See Jenkins v. OCWEN Federal Bank/Sovereign
8 Bancorp, No. 02-15935 (9th Cir. Feb. 19, 2003). Plaintiff is ordered to show cause as to
9 whether res judicata should apply in this matter no later than February 24, 2006. Plaintiff
10 shall also address whether another course of action, such as a motion to reopen the original
11 case under Rule 60 of the Federal Rules of Civil Procedure, would be appropriate. Plaintiff’s
12 submission shall not exceed 10 pages. Failure to timely show cause may result in the
13 dismissal of the case.

14 **IT IS SO ORDERED.**

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17 Dated: February 13, 2006



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE